S.B. CIVIL MISC. APPEAL NO.1224/2005.
Nava Ram Vs. Uma Ram & Ors.

Date of Order :: 29th August 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Surendra Surana, for the appellant.
Mr. Manoj Rathore, for the respondent No.4.

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By way of this appeal under Section 173 of the Motor Vehicles Act the appellant, registered owner of the vehicle involved in accident, seeks to question the award dated 11.02.2005 made by the Motor Accidents Claims Tribunal, Sirohi in Claim Case No.26/2002; and particularly seeks exoneration on the ground that the vehicle in question had already been transferred by him to the non-applicant No.3 Shiv Lal.

Briefly put, the background facts are that about 15 years old Bhalla Ram, son of the claimants, died for the injuries sustained in accident that occurred on 10.04.2001 when he was hit by a jeep bearing registration No. RJ24 T 142. The claimants sought compensation while arraying driver of the jeep Lala Ram as non-applicant No.1, registered owner of the jeep Nava Ram (the appellant) as non-applicant No.2, and transferee owner of the jeep Shiv Lal as non-applicant No.3.

Non-applicant No.1 driver contested the claim application with the averments that the accident occurred for the negligence of the victim himself. Non-applicant No.2 (the appellant) contested the claim application specifically on the submissions that on 29.06.2000 he had sold the vehicle to the non-applicant No.3 for a consideration of Rs.83,000/-; and handed over physical possession of the vehicle to the said transferee. Non-applicant No.3 did not file any reply to the claim application.

The Tribunal framed necessary issues including the issue regarding liability for payment of the amount of compensation. In evidence, the claimants examined Uma Ram, father of the victim as AW-1 and Jayanti Lal, an eye-witness to the accident as AW-2. The appellant Nava Ram examined himself as NAW-1, and one Arvind Puri as NAW-2 in support of the assertion that the vehicle had been transferred to the non-applicant No.3. The appellant also produced the document relating to sale transaction as Ex.A/1; a notice got served by him upon the non-applicant No.3 as Ex.A/2; and postal receipt and acknowledgment of the notice as Exs. A/3 and A/4 respectively.

The Tribunal has found in issues Nos. 1 and 2 that the accident occurred for rash and negligent driving of the aforesaid jeep by the non-applicant No.1 that resulted in

demise of the son of the claimants. In issue No.3, the Tribunal has taken the age of the victim at 15 years with reference to his school progress report (Ex.25); and has considered it appropriate to award compensation to the claimants-parents in the sum of Rs.1,40,000/- and has allowed interest @ 6% per annum, not from the date of filing of the claim application but only from the date all the non-applicants were served.

The Tribunal has considered the aspect of liability in issue No.4 and has held proved the fact as asserted by the appellant that the vehicle was sold to and handed over in possession of the non-applicant No.3. However, the Tribunal has proceeded to fasten liability on both the registered owner and the transferee owner for the reason that the vehicle in question stood registered in the name of the non-applicant No.2 (the appellant) Nava Ram; and was in possession and control of the non-applicant No.3 Shiv Lal; and the Tribunal held the non-applicant No.1 liable being the person who caused the accident by driving the jeep rashly and negligently.

As a result of its findings, the Tribunal has made the award of compensation in the sum of Rs.1,40,000/- in favour of the claimants and against the three non-applicants and has allowed interest @ 6% per annum from 01.12.2003. Hence this appeal.

It may be pointed out that in this appeal, earlier this Court had issued notice to the respondents, and stayed recovery against the appellant by the order dated 20.01.2006. When the matter was taken up for consideration after service on the respondents, it was given out on behalf of the appellant that he was ready to settle the matter with the claimants as noticed on 09.03.2007, and at the request, the matter was adjourned twice over. On 25.04.2007 when counsel for the appellant sought further time to make last effort to get the matter settled, consideration of the appeal was adjourned to 08.05.2007 but the appellant was directed to deposit additional amount of Rs.50,000/- with the Tribunal and on that condition the interim order granted earlier was extended. This Court, then, by the order dated 08.05.2007 extended the time for depositing the amount of Rs.50,000/- upto 22.05.2007. On 24.05.2007, it was stated on behalf of the appellant that he had deposited a demand draft in the sum of Rs.50,000/- with the Tribunal; and for the other side seeking time to verify, the matter was adjourned to be taken up after summer vacations.

Assailing the award aforesaid on behalf of the appellant, registered owner of the vehicle, learned counsel Mr. Surendra Surana has strenuously contended that the appellant having sold the vehicle to the respondent No.4 Shiv Lal (non-applicant No.3), no liability could have been fastened on him merely for

being the registered owner; and the Tribunal has been in error in holding the appellant jointly and severally liable along with the driver and actual owner of the vehicle. Learned counsel made a fervent appeal for absolving the appellant while submitting that the appellant is a poor person and with great difficulty he has been able to deposit the amount required by the statute and by the order of this Court; and submitted that in any case the remaining amount ought to be recovered from the respondent No.4, the transferee owner in whose possession and control the vehicle was being plied. The submissions cannot be accepted.

The fact remains that 15 years old son of the claimants met with his untimely end for the accident caused by the vehicle in question, and the Tribunal has awarded compensation only in the sum of Rs.1,40,000/- and has proceeded even to restrict the award of interest only from the date the non-applicants were served.

So far the liability is concerned, indisputably, the vehicle stood registered in the name of the appellant at the time of accident. Though the Tribunal has accepted the case of the appellant regarding transfer of the vehicle in view of his oral evidence and in view of the document Ex.A/1 and more particularly for the non-applicant Shiv Lal neither filing reply nor appearing in evidence; however, the fact remains that the

vehicle in question stood registered in the name of the appellant at the time of accident and the registration was not transferred, and then, it is not a case of concluded contract.

This Court is clearly of opinion that only on such propositions of transfers, the registered owner cannot obviate his liability and the interests of the claimants cannot be put to jeopardy. In the case of Dhul Chand Vs. Kanti Lal & Ors.: 2005 RAR 114 considering the liability of the registered owner and transferee owner of the vehicle this court has observed thus:

> "Therefore, even if, the appellant would have proved handing over the actual possession of the vehicle to the subsequent purchaser, they cannot have avoided their liability. It is true that in view of the Division Bench decision of this Court in New India Assurance Co. Ltd. (supra) even if, the vehicle has not been registered in the name of the purchaser and the purchaser permits his employee to drive the vehicle and his driver causes the accident, then the said transferee is also liable vicariously, **but along with the registered owner."**
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> (emphasis supplied)

In the case of Udai Singh & Anr. Vs. Bhana Ram & Ors.: S.B. Civil Misc. Appeal No. 100/1993, decided on 25.05.2007, while dismissing the appeal filed by the registered owner and transferee owner of the vehicle involved in accident, who were held jointly and severally liable for compensation along with the driver and the alleged second transferee owner of the

vehicle, this court has expressed the views thus:

> "This court is clearly of opinion that in the scheme of the provisions of the Motor Vehicles Act dealing with award of compensation for a vehicular accident, the interest of the claimants cannot be put to jeopardy on such propositions of alleged transfers of the offending vehicle under so-called agreements; nor the summary inquiry for award of compensation could be permitted to be converted into an elongated inquiry into the title of the vehicle. In such matters of alleged transfers under so-called agreements, the person or persons answering to the description of owner, whether as registered owner or for being in control and possession of the vehicle, remain liable for compensation jointly and severally to the claimants irrespective of their inter se arrangements."

Learned counsel has relied on a decision of this Court in the case of Chhogalal Vs. Vallabh & Ors.: 2003 RAR 348 to submit that this Court has approved absolving of the registered owner from liability when the vehicle was transferred and submitted that the same principle ought to be applied to the present case. The submission is not well founded. It is noticed from the fact situation of Chhogalal's case that therein the appellant, who was the transferee owner, admitted before the Tribunal that the vehicle in question was purchased by him a year before the accident and while admitting himself being the owner of the jeep, denied the occurrence. It was only before this Court in appeal that the said appellant, transferee owner, attempted to make out the case that since his name

was not transferred in the record of the registering authority, therefore, the registered owner alone would stand in liability. The stand so taken by the said appellant was not countenanced being not in conformity with the case set up by him before the Tribunal. However, the fact situation of the present case is that the said alleged transferee owner has not made any such admission; and further, even the suggestion of the appellant does not make out a case of concluded contract.

Learned counsel for the appellant has supplied photostat of the statements of the witnesses and, according to the statement of the appellant made before the Tribunal as NAW-1, the jeep was transferred to the non-applicant No.3 on 29.06.2000 for a consideration of Rs.83,000/-; and an amount of Rs.33,000/- was paid cash and remaining was to be paid in installments. However, there is direct contradiction regarding nature of installments as stated by the appellant in his testimony and that stated by his witness Arvind Puri NAW-2. While the appellant stated in cross-examination that the remaining amount was to be paid in 5 or 6 installments, his witness stated number of such installments to be 15. It is not borne out from the testimony of the appellant that the remaining installments were paid; and on the contrary, it appears from his testimony that he had been making oral demands for remaining payment. The appellant has not come

out with nor established the specific case of it being a concluded contract of transfer of vehicle; and in these circumstances remains liable along with other non-applicants.

The suggestion that the claimants be left to recover the remaining amount from the other non-applicants remains hollow and of no substance. The non-applicants stand in joint and several liability; and there appears no reason to bifurcate the liability in this case in the manner suggested.

There is no force in this appeal and the same is, therefore, dismissed. No costs.

(DINESH MAHESHWARI), J.

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